UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Linda Gayle Gunter, Debtor.	CHAPTER 13 CASE NO. 10-00547-W ORDER DENYING CONFIRMATION OF PLAN

This matter comes before the Court on the Amended Objection to Confirmation of Debtor's Chapter 13 Plan ("Objection") filed by CitiMortgage, Inc. ("CitiMortgage"). At the hearing on the Objection, the parties stipulated that the primary issue presently before the Court is whether CitiMortgage is bound by a purported agreement between the parties to resolve the Objection. The parties further stipulated that if the Court finds no settlement agreement was reached, Linda Gayle Gunter ("Debtor") would need to amend her plan. After considering the pleadings in this matter and the arguments and evidence presented at the hearing, the Court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, which is made applicable to this contested matter by Federal Rules of Bankruptcy Procedure 7052 and 9014(c).[1]

FINDINGS OF FACT

1. CitiMortgage holds a claim secured by Debtor's mobile home and lot in Pelion, South Carolina.

[1] To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any conclusions of law constitute findings of fact, they are so adopted.

2. On January 28, 2010, Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. Simultaneously with her petition, Debtor filed a Chapter 13 plan proposing to value the mobile home and land at $20,250.00 and to pay that value as a secured claim over the plan term, with the balance of CitiMortgage's claim to be treated as a general unsecured claim.

3. On February 11, 2010, CitiMortgage filed a proof of claim, asserting a secured claim with a principal balance of approximately $56,200.00, with an arrearage (through February, 2010) of $7,347.10, which is secured by a mortgage on real estate located at 144 Windsong Lane, Pelion, SC 29123. Debtor has not objected to the claim.

4. CitiMortgage objected to the plan, contending that its claim is not subject to bifurcation pursuant to 11 U.S.C. § 1322(b)(2) and contesting the value proposed by Debtor.

5. Prior to the confirmation hearing, Lex A. Rogerson, counsel for Debtor, and Mary R. Powers, Esq., counsel for CitiMortgage, discussed settlement in an exchange of e-mail messages. The e-mail exchange reads in its entirety as follows:

i. Rogerson e-mail to Powers dated March 24, 2010:

> We would propose to pay Citi the current $20,250, with interest at the local rule rate, through the plan, but instead of the remainder of the debt being discharged, my client would thereafter pay an additional $10,000, amortized at the contract interest rate (6.875%) over the following five years, beginning the month after the entry of a discharge in this case. This would be done via a consent order that specifies that the debt is not discharged but simply modified in accordance with these terms. All remaining terms of the note and mortgage would remain in effect until this case is discharged and the remaining $10,000 is paid.

ii. Powers e-mail to Rogerson dated April 19, 2010, sent at 9:56 AM:

> I have spoken with my client and they would like to make an offer to resolve this matter that is somewhat similar to the proposed offer you presented a few weeks ago. They would be willing to accept 33k - 20k in

the plan, 13 paid secured after the plan is completed, with the remainder of the balance to be treated as unsecured under the plan. They would like a provision stating that this bifurcation remains valid only upon the successful completion of the debtor's chapter 13 plan and the general discharge granted. Please let me know if this is an acceptable offer to resolve this matter. Thank you.

iii. Rogerson e-mail to Powers dated April 19, 2010, sent at 11:50 AM:

My client accepts this proposal, including the proviso about completion of the plan to discharge. The only remaining issue is to work out the details of the amortization of the post-petition $13,000. When we offered $10,000, we proposed 5 years at the contract rate (6.875%), which figures out to $197.42 / month. We propose to amortize the $13,000 over the same period at the same interest rate, which figures out to $256.65 per month. We would also propose that the first payment be due 30 days after discharge. Are these details acceptable to your client?

iv. Powers email to Rogerson dated April 19, 2010, sent at 12:07 PM:

I will discuss the details about the last 13k with my client and let you know. I am glad that it appears that we will be able to work this one out. Once the final details are hashed out, I am guessing we will need to advise the court of the resolution. I'll be in touch with you soon. Thanks.

v. Powers email to Rogerson dated April 20, 2010, sent at 4:25 PM:

My client is wondering why Ms. Gunter couldn't afford the full 33k over the term of the plan? It appears based on the schedules that they can afford the increase, especially if it is extended to 60 months. Could you shed some light on this? We are not prepared to move forward on the resolution of this objection until this concern is resolved. Thanks.

CONCLUSIONS OF LAW

The issue before the Court is whether the parties reached a binding settlement of CitiMortgage's plan objection. This Court has the inherent authority, deriving from its equity power, to enforce settlement agreements. Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002). However, it cannot enforce a settlement agreement unless it concludes that a complete agreement has been reached and determines the terms and conditions of the agreement.

Id. Because a settlement agreement is a contract, principles of contract law govern the formation and interpretation of settlement agreements. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242, 672 S.E.2d 799, 802 (Ct. App. 2008) (stating that under South Carolina jurisprudence, settlement agreements are viewed as contracts and thus general contract principles are applied in the construction of settlement agreements); see also, Hensley, 277 F.3d at 540 (stating that the resolution of a motion to enforce a settlement agreement draws on standard contract principles). The formation of a settlement agreement or other contract requires a meeting of the minds as to all essential and material terms. Patricia Grand Hotel, LLC v. MacGuire Enterprises, Inc., 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct. App. 2007). The South Carolina Supreme Court has stated:

> Nothing is better settled than that in order to constitute a contract there must be an offer on one side and an unconditional acceptance on the other. So long as any condition is not acceded to by both parties to the contract, the dealings are mere negotiations and may be terminated at any time by either party while they are pending. There must be a meeting of minds in order to constitute a contract. To constitute a contract the acceptance of the offer must be absolute and identical with the terms of the offer. If one offers another to do a definite thing, and that other person accepts conditionally or introduces a new term into the acceptance, his answer is either a mere expression of willingness to treat or it is in effect a counter proposal. A qualified acceptance does not constitute a contract.

Sossamon v. Littlejohn, 241 S.C. 478, 129 S.E.2d 124 (1963) (internal citations omitted). If this Court concludes that no settlement agreement was reached or that agreement was not reached on all the material terms, then it must deny enforcement. Hensley, 277 F.3d. at 541.

The conflict raised by the parties appears to have been caused in part by the nontraditional proposal offered to resolve the Objection and also by the informality often inherent in e-mail communications. The e-mails indicate a proposal to agree upon an allowed secured claim to be provided for in a plan with a reservation of a future nondischarged secured

claim to be addressed outside the plan's terms. Leaving aside the issue of whether such an agreement would be enforceable by order of this Court, the nontraditional proposal led to a variety of possible terms and arrangements.

Based upon the exchange of e-mails and language used therein, the Court cannot conclude that all material terms were agreed upon between the parties. The Rogerson e-mail of March 24, 2010 did not specify that CitiMortgage would be treated as an unsecured creditor in the bankruptcy case in a specific amount. It could be inferred that the plan would provide for an unsecured claim in the full amount of its deficiency, but it could also be inferred that no unsecured claim or a claim in a lesser amount would be allowed. Powers e-mail of April 19, 2010, sent at 9:56 AM, clearly required the balance of CitiMortgage's claim, less the $33,000, to be treated and paid as unsecured under the plan.

Rogerson's e-mail of April 19, 2010 suggests that the parties had not reached a meeting of the minds as to several material terms, including the term of the repayment schedule (the Debtor proposing 5 years and CitiMortgage never accepting the Debtor's term or offering one of its own); the date the first of the post-plan payments would be due (the Debtor proposing 30 days after discharge and CitiMortgage proposing that the first payment be due after the plan is completed); the interest rate on payments to be made under the plan (the Debtor proposing it be at the Local Rule rate[2] and CitiMortgage never accepting a rate or offering its own proposal); or the interest rate on payments to be made post-discharge or after the plan is completed (the Debtor

[2] Operating Rule 09-02, Interest Rate in Chapter 13 Cases, sets 5.25% as an interest rate presumed to be reasonable for secured claims in Chapter 13 cases. The Court notes, though, that simply because one party proposes an interest rate that is presumed reasonable by the Court does not mean that the other party, by silence, accepts it or that some other interest rate could render a plan non-confirmable under the circumstances.

proposing an interest rate of 6.875% and CitiMortgage never accepting a rate or offering its own proposal). While it might have been reasonable to assume that CitiMortgage would find acceptable the previously stated payment period and contract interest rate, there was no final discussion of those terms before CitiMortgage made its significantly different counteroffer. The Court notes that silence ordinarily does not constitute acceptance. H.A. Sack Co. v. Forest Beach Public Service District, 272 S.C. 235, 250 S.E.2d 340 (1978), citing Restatement 2d, Contracts, § 72, Comment A; and 17 C.J.S. Contracts § 41e. Furthermore, Debtor has not contended that CitiMortgage engaged in any conduct (other than to write the e-mails quoted above) that constituted an implied acceptance. Because the Court finds that agreement was not reached on all of the material terms, it cannot be enforced as a settlement agreement.

CONCLUSION

Based upon the foregoing, CitiMortgage's Objection is sustained. Upon agreement of the parties, confirmation of the plan filed on January 28, 2010 is denied and Debtor shall have ten (10) days from the entry of this Order within which to propose and file an amended plan.

AND IT IS SO ORDERED.

FILED BY THE COURT
05/27/2010

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

John E. Waites
Chief US Bankruptcy Judge
District of South Carolina

Entered: 05/27/2010